Motivational Video

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Lesson 2

THE FORMAL **MEDIATION PROCESS**

2

Purpose of this lesson

The purpose of this lesson is to give you an **overview of 5 stages of mediation.**

VISION

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Our Objectives

After completing this lesson, you should be able to:

- Define key terms
- Identify and explain the 5 stages of Mediation
- List and provide examples of each of the five stages

4

What is Mediation?

In its simplest form, mediation is a conflict resolution method in which a mediator helps two people negotiate a voluntary solution to their dispute. What makes mediation different from other third-party dispute resolution processes is that the mediator does not have the power to decide who "wins" the dispute or what the solution should be.

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Neutrality

The mediator is neutral and provides nonjudgmental management of the negotiation process.

Neutral means not taking sides or not belonging to, favoring, or assisting any side in a war, dispute, contest, or controversy.

Impartial means not biased or having no direct involvement or interest and not favoring one person or side more than another.

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Power of Mediation

Even though the mediator has no power to decide, mediation is a powerful and successful dispute resolution process.

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Statistics

The majority of mediated conflicts result in negotiated solutions that are satisfactory to all the disputants.

Statistics from mediation centers indicate that approximately 85 percent of the mediations end in agreements.

Even if there is no mediated solution, the disputants are no worse off than before the mediation.

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Especially in disputes, the mediator has no way of knowing what a fair and workable settlement would be from the disputants' perspectives.

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In addition, there is no legal standard by which to judge, for example, how much noise is too much for the neighborhood or how the children of the neighbors should relate to each other.

Because the disputants have to live with any negotiated agreement, the disputants (not the mediator) are the people in the best position to decide what is the best, most workable solution…

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The key is the ability of the mediator to create a more productive discussion than the parties could have had by themselves. To do this, mediators help the parties determine facts; they show empathy and impartiality with the parties; and they help the parties generate new ideas.

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Mediators also exercise political skill and use persuasion to get people to soften hard-line positions. (Bercovitch, 2001)

Often, though not always, they have a lot of background knowledge of the issues and type of dispute.

Though many mediators are highly trained and experienced, mediators come from many different walks of life.

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Lawyers often believe that the purpose of mediation is rapid and efficient settlement of a particular case. But others disagree.

Sometimes the purpose of a mediation is more to improve relationships among parties who will have to deal with each other again, or even to help them learn how best to handle conflict with other parties in the future.

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Mediation that focuses on settlement is sometimes termed problem-solving mediation; mediation that focuses more on relationships is called transformative mediation.

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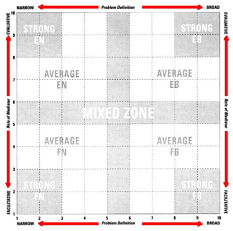
Riskin's Grid

Review of the four quadrants



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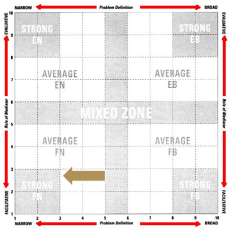
Riskin's Grid Continued

The Facilitative-Narrow mediator "plans to help the participants become realistic about their litigation situations. But he employs different techniques. He does not use his own assessments, predictions or proposals. Nor does he apply pressure. Moreover, he probably will not request or study relevant documents, such as pleadings, depositions, reports or mediation briefs. Instead, because he believes that the burden of decision should rest with the parties, the Facilitative-Narrow Mediator might ask questions—generally in private caucus—to help the participants understand both sides' legal positions and the consequences of non-settlement."



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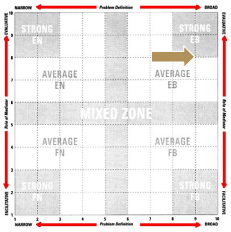
Riskin's Grid Continued

The Evaluative-Broad mediator "helps the parties understand their circumstances and options. However, she has a different notion of what this requires. So she emphasizes the parties' interests over their positions and proposes solutions designed to accommodate these interests. In addition, because the Evaluative-Broad Mediator constructs the agreement, she emphasizes her own understanding of the circumstances at least as much as the parties'."



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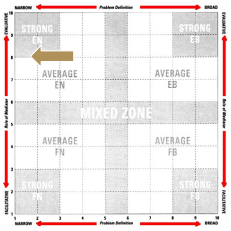
Riskin's Grid Continued

The Evaluative-Broad mediator "also provides predictions, assessments and recommendations. But she emphasizes options that address underlying interests, rather than those that propose only compromise on narrow issues."



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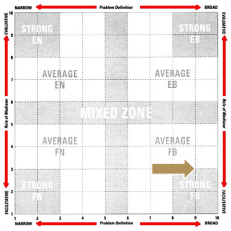
Riskin's Grid Continued

The Facilitative-Broad mediator "seeks to help the parties define, understand and resolve the problems they wish to address. She encourages them to consider underlying interests rather than positions and helps them generate and assess proposals designed to accommodate those interests."



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While many mediators pride themselves on their neutrality, some observers believe that it is impossible for any human being to be truly neutral. Others have concluded that even biased mediators can be useful, as long as the bias is not hidden from any party and parties have an opportunity to protect themselves against its effects.

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The courts of the U.S. State of Florida alone now refer approximately 150,000 cases per year to mediation, rather than expecting the parties to fight their disputes out in trials or to work out settlements without third-party help.

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5 Stage of Mediation

- The model of mediation in this lesson was developed at Pepperdine University School of Law, Straus Institute for Dispute Resolution, the nation's leading graduate schools for alternative dispute resolution.
- The mediation model presented here has been revised and refined as a result of the experiences of many volunteer mediators and almost countless mediator trainings conducted at the institute.

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- The mediation process is conceptually divided into five stages referred to as the Convening Stage, Opening Stage, Communication Stage, Negotiation Stage and the Closing Stage.

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The Convening Stage

Convening is the first stage in the mediation.

- Literally, ***convene means to come together for or arrange a formal meeting.***

- Its function is to get disputing parties to the table for conflict resolution and prepare them for the upcoming mediation session. Its goal is to prepare and facilitate the progress of the mediation.

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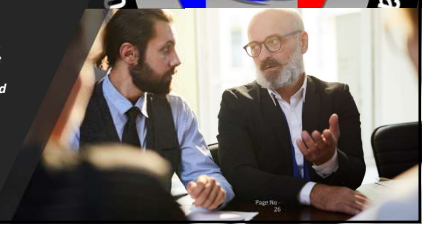
The Opening Stage

- After the disputants are seated at a table, the mediator introduces everyone, explains the goals and rules of the mediation, and encourages each side to work cooperatively toward a settlement. ***An opening in the mediation sense means an opportunity to do something and to create safety and hope.***



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Communication Stage

- In the Communication Stage an increasing amount of information becomes available to the mediator and the disputants as issues, positions, interests, feelings, and hidden agendas are discussed and clarified in the caucuses.

- ***Communication means the exchange of information between individuals, for example, by means of speaking, writing, or using a common system of signs or behavior.***

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Communication Cont'd

- Disputants begin with an introductory statement.
- These introductory statements permit each disputant the opportunity to describe, in his or her own words, what the dispute is about and how he or she has been affected by it, and to present some general ideas about resolving it.
- While one person is speaking, the other has usually agreed not to interrupt.
- The full development of facts and feelings in the Communication Stage offers the greatest opportunity to create in the Negotiation Stage a cooperative, integrative solution - what some people refer to as a "win-win" solution.
- As the mediator uses this Communication Stage to learn the history of the conflict, the disputants often focus on just the facts, which support their view of the conflict.
- In both joint meetings and especially in the caucuses, the mediator probes beyond the apparent facts to learn the disputants' underlying interests and feelings about the conflict.

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Communication Cont'd

- During the Communication Stage, the time focus is on the past and the present.
- Throughout the entire mediation process, mediators use facilitative communication techniques.
- During the Communication Stage, the mediators try to get the disputants to reveal and clarify their interests and express their feelings by using various communication techniques such as open-ended questions, clarifying questions, and active listening.
- Mediators often summarize to acknowledge what the disputants have said, to prevent repetitive accounts, and to check their understanding of what the disputants mean.
- Mediators use active listening to acknowledge the disputants' feelings because feelings can be as important to a solution as the facts.
- Mediators also "reframe" the disputants' language to eliminate blame and the attribution of motives.

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Negotiation Stage

In the Negotiation Stage the mediator shifts the focus to the future and assists the disputants to negotiate solutions based upon their interests.

Negotiation is the reaching of agreement through discussion and compromise or collaboration. The Negotiation Stage may begin with a series of caucuses.

A caucus is private session called for a specific purpose such as: diffusing unmanageably upset, disrespectful or intolerant parties; clarifying facts hidden by discomfort or embarrassment.

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Caucus

- The private caucus is a chance for each party to meet privately with the mediator (usually in a nearby room) to discuss the strengths and weaknesses of his or her position, and new ideas for settlement.
- The mediator may caucus with each side just once, or several times, as needed.
- These private meetings are considered the guts of mediation.
- After caucuses, the mediator may bring the parties back together to negotiate directly.
- During the Negotiation Stage the disputants are expected and encouraged to create their own solutions to the conflict.

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Caucus Cont'd

- A Caucus should be called while evaluating a party's position without causing embarrassment or compromising neutrality, or encouraging one party to see the other side's perspective without risk of commitment.
- The caucuses are used to move the disputants off their current negotiating positions by asking them to brainstorm possible solutions to the problem.
- Mediators can use a number of techniques to narrow the differences between the disputants and allow them to save face.
- Common mediator tactics are to review the good parts of the prior relationship, create doubts, stress the consequences of no agreement, provide reality testing about proposed solutions, and emphasize the progress that has been made.
- Several caucuses may be necessary.

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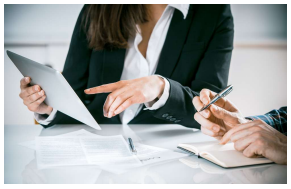
Closing Stage

Closing is to complete a transaction successfully, for example,

in mediation to end with a mutually satisfactory written agreement in the parties' own words or the termination of the mediation session. This is the end of the mediation.



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Closing Cont'd

- If an agreement has been reached, the mediator may put its main provisions in writing with the parties' permission as the parties listen.
- The mediator may ask each side to sign the written summary of agreement or suggest they take it to lawyers for review.
- If the parties want to, they can themselves write up and sign a legally binding contract.
- If no agreement was reached, the mediator will review whatever progress has been made and advise everyone of their options, such as meeting again later, going to arbitration, or going to court.

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Summary

- The process of mediation has been used for thousands of years to resolve conflicts. In some parts of the world, mediation is considered to be the same as, or similar to, conciliation.
- Whatever its name, at its core is a voluntary process used to help two or more disputants negotiate and settle their differences.
- This lesson has described a basic model of mediation taught to mediators around the world and adapted to a wide variety of disputes.

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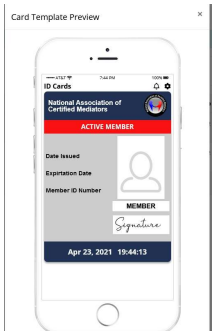
New Identification Cards



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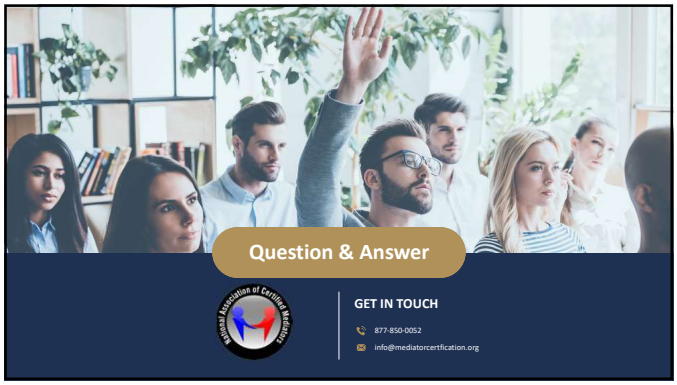
Question & Answer
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